

**AGREEMENT
BETWEEN
DREXEL UNIVERSITY FOR ITS COLLEGE OF MEDICINE
AND
UNIVERSITY OF PENNSYLVANIA HEALTH SYSTEM.**

THIS AGREEMENT (the "Agreement") is made and executed as of December 1, 2015 ("Effective Date") by and between **DREXEL UNIVERSITY FOR ITS COLLEGE OF MEDICINE** ("DUCOM"), on behalf of its Department of Emergency Medicine Philadelphia Sexual Assault Response Center (the "Department"), and **THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, AS OWNER AND OPERATOR OF THE UNIVERSITY OF PENNSYLVANIA HEALTH SYSTEM** ("PENN" or "UPHS")

RECITALS

WHEREAS, DUCOM employs various health care professionals, including Sexual Assault Nurse Examiner ("SANE") trained nurses ("DUCOM Personnel");

WHEREAS, DUCOM desires permission to offer and provide sexual assault examinations by DUCOM Personnel for UPHS patients at the Hospital of the University of Pennsylvania ("HUP"), Penn Presbyterian Medical Center ("PPMC") Pennsylvania Hospital ("PAH"), and facilities of UPHS (the "Services").

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, it is mutually agreed and covenanted by the parties to this Agreement, as follows:

1. **Sexual Assault Examinations.** Subject to the terms of this Agreement, DUCOM will be permitted to perform sexual assault examinations at PENN's HUP, PPMC and PAH campuses. DUCOM shall obtain each patient's written consent and perform such examinations in accordance with Schedule A, and all applicable legal requirements and professional standards. DUCOM shall ensure that each and every DUCOM Personnel shall be in compliance with DUCOM, HUP, PAH, PPMC and UPHS policies for working in clinical practices and the UPHS hospitals.
2. **Supplies, Facilities and Personnel.** PENN will provide the following at its own expense:
 - A. Designated parking without charge.
 - B. Accompaniment of the SANE nurse to the unit where the patient is located.
 - C. Assistance with the patient as reasonably requested by the SANE.

- D. Patient stickers/labels for the labeling of evidence.
- E. Copy of patient demographic or face sheet.

3. **Term and Termination.**

A. The parties agree that this Agreement will be in effect for one year from the Effective Date (the "Term"), and thereafter from year to year for five (5) years, unless either party gives the other party notice pursuant to Section 2(C)..

B. Either party may terminate the Agreement if the other party breaches a material provision of the Agreement and does not correct such breach within thirty (30) days of receipt of written notice of such breach to be delivered by the non-breaching party.

C. Either party may terminate the Agreement upon twenty (20) days written notice, with or without cause.

D. The provisions of Sections 4, 5 and 6 of this Agreement shall survive the termination of this Agreement.

4. **Compensation.** DUCOM shall bill the Pennsylvania Victims Compensation Assistance Program of the Pennsylvania Commission on Crime and Delinquency per their Forensic Rape Examination Billing Procedures, and PENN shall have no obligation with respect to payment to DUCOM for such examinations.

5. **Insurance.**

A. In connection with the performance of this Agreement, DUCOM, at its own cost and expense, shall obtain and maintain in force during the term of this Agreement, and where claims made insurance coverage applies, for a period of five (5) years after such Agreement has terminated or ended, the following insurance coverage:

i. A policy of workers' compensation insurance, in amounts required by law, covering all officers and employees of DUCOM who are in any way engaged in or connected with the Agreement and employer's liability insurance in an amount of not less than Five Hundred Thousand Dollars (\$500,000). DUCOM shall require its agents who are in any way engaged in or connected with the performance of this Agreement to maintain similar insurance.

ii. A policy of commercial general liability insurance including products, completed operations and infringement of intellectual property rights coverage, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence. The limit requirements of this paragraph may be satisfied by a combination of primary and excess liability coverage. The commercial general liability insurance policy shall name PENN as an additional insured.

iii. A policy of errors and omissions insurance, including professional liability coverage as may be customary and appropriate given the nature of DUCOM's and UPHS' business, in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. If the policy is a claims-made policy, the policy must have a "tail".

iv. A policy of professional liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate, covering all officers, employees or agents of DUCOM's who are in any way engaged in or connected with the performance of the Services of a professional medical or direct patient care nature, provided, however, that if DUCOM is a "Health Care Facility" as defined under Section 103 of the Pennsylvania Health Care Facilities Act 35 P.S. §448.101, et seq., such policy limits shall be in the amount of One Million Dollars (\$1,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate. Such professional liability insurance limits may be inclusive of the Pennsylvania Medical Care Availability and Reduction of Error Fund ("MCare"), or coverage equivalent to that provided by MCare if coverage thereunder should cease to be available or should no longer be required. If the professional liability policy is a claims-made policy, the policy must have a "tail".

v. A policy of comprehensive automobile liability insurance covering the operation of all automobiles used in connection with the performance of this Agreement, affording protection in an amount of not less than One Million Dollars (\$1,000,000) covering the operation of all automobiles to be used by DUCOM or any of its officers, employees or agents in connection with the performance of this Agreement. The limit requirements of this paragraph may be satisfied by a combination of primary and excess liability coverage.

B. In connection with the performance of this Agreement, PENN, at its own cost and expense, shall obtain and maintain in force during the term of this Agreement, and where claims made insurance coverage applies, for a period of five (5) years after such Agreement has terminated or ended, the following insurance coverage:

i. A policy of workers' compensation insurance, in amounts required by law, covering all officers and employees of PENN who are in any way engaged in or connected with the Agreement and employer's liability insurance in an amount of not less than Five Hundred Thousand Dollars (\$500,000). PENN shall require its agents who are in any way engaged in or connected with the performance of this Agreement to maintain similar insurance.

ii. A policy of commercial general liability insurance including products, completed operations and infringement of intellectual property rights

coverage, in an amount not less than Two Million Dollars (\$2,000,000) per occurrence. The limit requirements of this paragraph may be satisfied by a combination of primary and excess liability coverage.

iii. A policy of errors and omissions insurance, including professional liability coverage as may be customary and appropriate given the nature of PENN's and DUCOM's business, in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. If the policy is a claims-made policy, the policy must have a "tail".

iv. A policy of professional liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate, covering all officers, employees or agents of PENN who are in any way engaged in or connected with the performance of the Services of a professional medical or direct patient care nature, provided, however, that if PENN is a "Health Care Facility" as defined under Section 103 of the Pennsylvania Health Care Facilities Act 35 P.S. §448.101, et seq., such policy limits shall be in the amount of One Million Dollars (\$1,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the aggregate. Such professional liability insurance limits may be inclusive of the Pennsylvania Medical Care Availability and Reduction of Error Fund ("MCare"), or coverage equivalent to that provided by MCare if coverage thereunder should cease to be available or should no longer be required. If the professional liability policy is a claims-made policy, the policy must have a "tail".

v. A policy of comprehensive automobile liability insurance covering the operation of all automobiles used in connection with the performance of this Agreement, affording protection in an amount of not less than Two Million Dollars (\$2,000,000) covering the operation of all automobiles to be used by PENN or any of its officers, employees or agents in connection with the performance of this Agreement. The limit requirements of this paragraph may be satisfied by a combination of primary and excess liability coverage.

Each of these insurance policies shall be issued by insurance companies each with an AM Best Rating of "A" or its functional equivalent and shall be licensed or permitted to conduct business in the Commonwealth of Pennsylvania. Prior to the commencement of this Agreement, and on each policy renewal date as long as the Agreement is in effect, the parties shall furnish to each other a current certificate of insurance and policy endorsements required by this section for each of the policies required above. Insurance coverage(s) provided under this Agreement shall not limit or restrict in any way liability arising under or in connection with this Agreement. Such insurance shall not be canceled or terminated by either party unless the other party shall have received thirty (30) days prior written notice of any such cancellation or termination.

6. **Indemnification**

A. DUCOM agrees to defend, indemnify and hold PENN, its trustees, officers, employees and agents harmless from any and all liability, loss, damage, claim, fine or expense, including court costs and reasonable attorneys' fees ("Claims") to the extent such arise due to the negligent or intentional acts or omissions of DUCOM, its employees and agents.

B. PENN agrees to defend, indemnify and hold DUCOM, its trustees, officers, employees and agents harmless from any and all Claims to the extent such arise due to the negligent or intentional acts or omissions of PENN, its employees and agents.

C. However, neither party shall settle any Claim for which the other party is seeking indemnification hereunder without the other party's consent which shall not be unreasonably withheld or delayed.

7. **Proprietary Information; Confidential Information; HIPAA Compliance.** The parties recognize that each of their business interests require a confidential relationship between them and the fullest practical protection and confidential treatment of their trade secrets, business plans, contracts, agreements, internal reports, patient rates and charges or any other pricing information, patient information, management systems, utilization review methodologies, security systems, auditing procedures, policies, techniques, concepts, programs, innovations, inventions and improvements (hereinafter collectively termed "information") which will be received or learned by DUCOM Personnel or PENN employees during the term of this Agreement. Accordingly, the parties agree both during and after the term of this Agreement, to keep secret and to treat confidentially all PENN and DUCOM information, whether patentable, patented or not, and not to use or aid others in using any such information in competition with PENN or DUCOM.

8. **Business Associate.** As UPHS's Business Associate, DUCOM shall be bound by the terms and conditions of the Business Associate Agreement attached hereto as Exhibit A, and to the extent not previously executed, the parties shall execute the same simultaneously with this Agreement.

9. **Independent Contractor.** In performing the sexual assault examinations herein specified, DUCOM is acting as an independent contractor and not as the agent or employee of PENN and shall not have right to any benefits afforded by PENN to its employees, including without limitation, workers' compensation insurance. Nothing in this Agreement shall be construed to create a partnership or joint venture between DUCOM and PENN or to authorize either to act as an agent of the other party in any respect.

10. **Notices.** All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed duly to have been given if personally delivered to a party, sent by facsimile or if sent by the United States Postal Service certified mail, return receipt requested, postage prepaid or by Federal Express, United Parcel or other nationally recognized overnight carriers. All notices or communications between PENN and DUCOM pertaining to this Agreement shall be addressed as follows:

If to DUCOM:

Drexel University College of Medicine
245 N. 15th Street, Mail Stop 1011
Philadelphia, PA 19102-1192
ATTN: Chair, Department of Emergency Medicine

With a courtesy copy to:

Drexel University College of Medicine
Office of the General Counsel
1601 Cherry Street, Suite 10627
Philadelphia, PA 19102
ATTN: General Counsel

If to PENN:

James Ballinghoff, RN, MSN, MBA, Chief Nursing Officer, PPMC,
PPMC Administration
39th and Market Streets
Philadelphia, PA 19104

With a copy to:

University of Pennsylvania/Penn Medicine
Office of General Counsel
3539 Locust Walk
Philadelphia, PA 19104
Attn: Senior Counsel, Health System Division

Any party may change its notification address by giving written notice to that effect to the other parties in the manner provided herein. Notices shall be effective upon receipt.

11. DUCOM Responsibilities.

11.1. For all DUCOM Personnel who are: (a) assigned to provide sexual assault examination Services to UPHS patients; or (b) who are providing Services at UPHS facilities for a period of thirty (30) days or longer, DUCOM shall, at DUCOM's expense, perform:

(a) Criminal background checks in all known counties and states of residence and employment (with the results made available to UPHS only upon and to the extent of UPHS's request), covering a minimum of seven (7) years back from the date upon which each DUCOM personnel was hired by DUCOM or when background check was first performed. To the extent permitted by law, DUCOM must immediately notify UPHS in writing if any DUCOM Personnel subject to the provisions of this paragraph is or has been convicted of any crime.

(b) Child abuse clearances for all DUCOM Personnel as required by and in accordance with Pennsylvania Child Protective Services laws, 23 Pa. CSA 6301 et seq.

(c) Verification of employment history covering a minimum of seven (7) years back from the date upon which each DUCOM Personnel was hired by DUCOM, or four (4) employers back from when each DUCOM Personnel was hired by DUCOM, whichever is greater.

(d) Verification of educational history up to and including the highest degree obtained by each DUCOM Personnel.

(e) Verification and validation of each DUCOM Personnel Social Security number and verification of the identity and work authority of each DUCOM Personnel under United States immigration laws.

(f) at UPHS's expense if requested by UPHS

(g) Primary source verification of licensure, certification and registration, if applicable.

11.2 DUCOM shall provide training to its DUCOM Personnel regarding workplace safety, privacy and other standards, shall establish mechanisms to ensure that its personnel comply with all applicable standards, including but not limited to the requirements of The Joint Commission, shall evaluate the performance of any DUCOM Personnel who are engaged under this Agreement at regular intervals, maintain documentation of primary source verification as required; and shall certify that its DUCOM Personnel meet the requisite qualifications and competencies and are performing such Services in a safe and effective manner.

11.3 **Health Status.** DUCOM shall require that its DUCOM Personnel who provide sexual assault examination Services in patient care areas furnish proof of routine immunizations, including annual influenza immunization and any other vaccinations/immunizations as UPHS may require from time to time, and provide documentation of, or submit to, testing for rubella, hepatitis, chicken pox, measles,

mumps and tuberculosis. Documentation regarding tuberculosis testing must evidence testing annually thereafter.

11.4 If applicable, DUCOM shall comply with all requirements of UPHS' vendor registration program.

12. **Compliance with Laws/UPHS Rules, Regulations and Policies.** DUCOM shall perform and cause its DUCOM Personnel to perform, the sexual assault examination Services required under this Agreement in a manner which is in accordance with applicable federal standards, Joint Commission accreditation standards, quality assurance standards, and other governing policies of UPHS regarding quality and safety of treatment. The parties shall mutually define in writing those indicators for quality and safety of treatment in accordance with Joint Commission standards, and DUCOM shall make the results of those indicators available to UPHS.

Documentation of compliance with Joint Commission requirements shall be: (a) maintained on DUCOM's premises; (b) stored in a format reasonably requested by UPHS; and (c) available in summary report formats reasonably requested by UPHS. In addition, DUCOM shall comply with and cause its DUCOM Personnel to comply with, all applicable rules, regulations, policies and procedures of UPHS as they exist now and as they may be amended from time to time, including, but not limited to, all policies and procedures relating to ingress and egress to and from UPHS' campus and premises, parking, confidentiality of PHI, fraud, waste and abuse, use of the University of Pennsylvania and UPHS names, smoking, safety, waste disposal, and infection control. DUCOM shall perform, and cause its DUCOM Personnel to perform, the Services required under this Agreement in a manner which is in accordance with applicable federal standards regarding the prevention of the transmission of bloodborne pathogens. DUCOM shall cooperate with UPHS in any manner reasonably requested, in connection with any effort undertaken by UPHS to maintain accreditation from the Joint Commission or any other like body.

13. **Medicare access to records.** If Section 1861 (v)(1)(I) of the Social Security Act applies to this Agreement, then, until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, DUCOM shall make available upon written request of the Secretary of Health and Human Services or the U.S. Comptroller General, or their duly authorized representatives, this Agreement, and records of DUCOM that verify the nature and extent of costs incurred under this Agreement. If DUCOM carries out any of the duties of this Agreement with a value of \$10,000 or more over a twelve month period through a subcontract with a related organization, such contract must contain a clause to the effect that until the expiration of four (4) years after the furnishing of services under the subcontract, the related organization shall make available, upon written request of the Secretary of Health and Human Services, the U.S. Comptroller General or any of its authorized representatives, the subcontract, and books, documents and records of the related organization that are necessary to verify the nature and extent of costs. If DUCOM is requested to disclose any books, documents or records relevant to this Agreement for the purpose of an audit or

investigation, DUCOM shall notify UPHS of the nature and scope of such request and shall make available to UPHS, upon request by UPHS, all such books, documents and records.

14. **Advertising and publicity.** Neither party shall use the name, logo or trademark of the other (or of any of the other's affiliates) in any form of publicity or promotional or advertising material, or in any communications with the media without the other's prior written consent to the specific contemplated use. No such use by DUCOM shall state or imply that UPHS endorses DUCOM or the Services and all such use shall comply with applicable PENN and UPHS policies with respect to DUCOM endorsements. UPHS may terminate this Agreement and seek injunctive relief immediately if DUCOM violates this provision.

15. **Miscellaneous.**

A. **Waiver of Breach.** The parties hereto agree that the waiver by either party of a breach by the other party of any of the provisions contained in this Agreement shall not operate as or be construed to be a waiver of any other breach of this Agreement by any party.

B. **Entire Agreement; Binding Effect.** This Agreement constitutes the entire understanding among the parties hereto and is intended as the complete and exclusive statement of the agreement among the parties with respect to the subject matter hereof, and supersedes all prior agreements and negotiations thereto. Any term on any document containing terms inconsistent with those contained herein is not valid and will not be binding on any party. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

C. **Assignment.** This agreement may not be assigned or delegated to any party without the prior written consent of the other party, except to an affiliate or in connection with a reorganization, merger or sale or transfer of substantially all of the assets.

D. **Modification.** This Agreement may not be modified in any respect other than by an agreement in writing signed by both parties.

E. **Change of Law.** Notwithstanding anything contained herein to the contrary, either party may notify the other in writing of its intention to terminate this Agreement if at any time any federal, state or local government law, regulation or policy, or the policies of any material third party payor, or interpretations of the foregoing given by a reputable health care attorney, by virtue of this Agreement, cause either party to fail to comply with any such law, regulation, policy or interpretation or shall materially impair (impairment being considered in the legal compliance, operational or financial sense) the continuing validity and/or effectiveness of any material provision hereof.

This termination will become effective only if the parties in good faith are unable to agree, within thirty (30) days after receipt of notice of such impairment, upon a modification to this Agreement that will bring the Agreement into compliance with the law, regulation or policy at issue.

F. **No Obligation to Refer.** The consideration received by either party under this Agreement is not in any way conditioned upon, or shall the terms and conditions of the Agreement vary, based upon the volume or value of business referred between the parties. Neither party is under any obligation to make referrals to or otherwise generate business for the other party.

G. **Construction and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania (excepting any conflict of laws, provisions which would serve to defeat application of Pennsylvania substantive law). All of the parties hereto submit to the exclusive jurisdiction of the state and/or federal courts located within the County of Philadelphia for any suit, hearing or other legal proceeding of every nature, kind and description whatsoever in the event of any dispute or controversy arising hereunder or relating hereto, or in the event any ruling, finding or other legal determination is required or desired hereunder.

H. **Severability.** If any portion of this Agreement is held invalid, such invalidity shall not affect the validity of the remaining portions of the Agreement, and the parties will substitute for any such invalid portion hereof a provision which best approximates the effect and intent of the invalid provision.

I. **Counterparts.** Provided that all parties hereto execute a copy of this Agreement, this Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile transmission or other comparable means.

J. **Sanctioned person.** DUCOM represents and warrants that it and any of its agents, employees, officers, and representatives providing sexual assault examination Services under this Agreement: (a) are not "sanctioned persons" under any federal or state program or law; (b) have not been listed in the current Cumulative Sanction List of the Office of Inspector General for the United States Department of Health and Human Services for currently sanctioned or excluded individuals or entities; (c) have not been listed on the General Services Administration's List of Parties Excluded from Federal Programs; (d) have not been listed on the United States Department of Treasury, Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List; (e) have not been convicted of a criminal offense related to health care; and (f) are not a debarred or suspended contractor of the Commonwealth of Pennsylvania. DUCOM shall immediately notify PENN in the event

that it is no longer able to make such representations and warranties. Without limitation to any other rights and remedies under this Agreement, afforded by law, or in equity, PENN may terminate this Agreement with five (5) days written notice, without penalty, in the event that PENN has determined that DUCOM is in breach of this provision.

K. **Compliance.** DUCOM shall comply with applicable: (i) federal, state, and local laws, regulations, and executive orders, and amendments thereto, including, but not limited to, OSHA, NRC and CDC regulations, Medicare and Medicaid billing and referral regulations, and the Pennsylvania Department of Health and Pennsylvania Department of Public Welfare regulations; (ii) accreditation standards such as those set forth by The Joint Commission; (iii) requirements imposed under any city, state, federal, foundation or other award, contract, funding, reimbursement, payments policy, or grant; and (iv) PENN's policies and procedures including, without limitation, its anti-discrimination and sexual harassment policies as well as those available at www.PENNhealth.org

L. **Non-discrimination.** In the performance of this Agreement, neither party shall unlawfully discriminate toward any patients, employees, applicants or other persons regardless of their race, color, sex, age, religion, national origin, creed, ancestry, ethnicity, sexual orientation, gender identity or expression, genetic information, socioeconomic status, domestic or sexual violence victim status, source of income, source of payment, veteran status, marital status, familial status disability or any other manner prohibited by law.

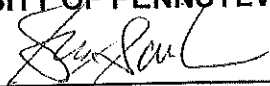
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and the year first written above by their duly authorized representatives.

DREXEL UNIVERSITY FOR ITS COLLEGE OF MEDICINE

On behalf of its Department of Emergency Medicine Philadelphia Sexual Response Center

By: _____
Name:
Title:
Date: _____

UNIVERSITY OF PENNSYLVANIA HEALTH SYSTEM

By:  _____
Name: Garry L. Scheib
Title: Chief Operating Officer, UPHS

PennSANEAgreement CLEAN 09-18-15 bsa 11 05 15 tmd CLEAN.docxFinal

Date: _____

SCHEDULE A

SANE Nurse Examiner shall:

A. Obtain patient consent in accordance with all applicable laws and regulations and shall provide a copy of such consent to PENN.

B. Upon receipt of consent, perform Forensic Rape Examinations and Evidence Collection by SANE trained nurses on patients of PENN in accordance with all applicable standards of care as is usual and customary for such examinations.

C. Provide 24/7 on-call SANE coverage;

D. Timely respond to PENN (within 2 hours of call);

E. Provide Written recommendations to patients for sexually transmitted infection prophylaxis, pregnancy prophylaxis and HIV prophylaxis per CDC guidelines; and

F. Transfer forensic evidence to the appropriate police agency.

EXHIBIT A

UNIVERSITY OF PENNSYLVANIA HEALTH SYSTEM HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement ("Agreement") is entered into by and between the Trustees of the University of Pennsylvania as owner and operator of the University of Pennsylvania Health System ("UPHS" or "Penn" "Covered Entity") and Drexel University ("Hybrid Entity") for its Covered Entity Component the College of Medicine on behalf of the Department of Emergency Medicine Philadelphia Sexual Assault Response Center ("SARC" or "Business Associate") and is effective as of December 1, 2015("Effective Date").

RECITALS

BUSINESS ASSOCIATE desires to protect the privacy and provide for the security of UPHS' Protected Health Information (as that term is defined herein) used by or disclosed to BUSINESS ASSOCIATE in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (45 CFR Parts 160, 162 and 164, the "HIPAA Regulations"), the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), and other applicable laws and regulations. The purpose of this Agreement is to satisfy certain standards and requirements of HIPAA, the HIPAA Regulations, including 45 CFR Section 164.504(e), and the HITECH Act, including Subtitle D, part 1, as they may be amended from time to time.

Therefore, intending to be legally bound hereby, the parties agree as follows:

1. DEFINITIONS.

1.1 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under HIPAA which compromises the security or privacy of PHI, subject to the exceptions set forth in 45 CFR 164.402.

1.2 "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given to such term under the HITECH Act, including Section 13400(5).

1.3 "Electronic PHI" means PHI that is transmitted by or maintained in electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including 45 CFR Section 160.103.

1.4 "Information System" means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including 45 CFR Section 164.304.

1.5 "Protected Health Information" ("PHI") means any information, including Electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR Section 160.103.

1.6 "Secretary" means the Secretary, Department of Health and Human Services, or his or her designee.

1.7 "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an Information System, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including 45 CFR Section 164.304.

1.8 "Unsecured PHI" means PHI that is not secured through the use of an Encryption or Destruction technology or methodology that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals, and shall have the meaning given to such term under guidance issued by the Secretary as may be revised from time to time.

1.8.1 "Encryption" means a technology or methodology that utilizes an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key, and such confidential process or key that might enable decryption has not been breached.

1.8.2 "Destruction" means the use of a technology or methodology by which the media on which the PHI is stored or recorded has been shredded, destroyed, cleared, or purged, as appropriate, such that the PHI cannot be read, retrieved, or otherwise reconstructed.

2. RESPONSIBILITIES OF BUSINESS ASSOCIATE.

2.1 Permitted Uses and Disclosures of PHI. BUSINESS ASSOCIATE may use, access, and/or disclose PHI received by BUSINESS ASSOCIATE solely for the purpose

of performing the services and/or functions for which UPHS has retained BUSINESS ASSOCIATE, subject to the terms and conditions of this Agreement.

2.1.1 Minimum Necessary. With respect to the use, access, or disclosure of PHI by BUSINESS ASSOCIATE as permitted under section 2.1, BUSINESS ASSOCIATE shall limit such use, access, or disclosure, to the extent practicable, to the minimum necessary to accomplish the intended purpose of such use, access, or disclosure. UPHS shall determine what constitutes the minimum necessary to accomplish the intended purpose in accordance with HIPAA, HIPAA Regulations and any applicable guidance issued by the Secretary.

2.1.2 Documentation of Disclosures. With respect to any disclosures of PHI by BUSINESS ASSOCIATE as permitted under section 2.1, BUSINESS ASSOCIATE shall document such disclosures including, but not limited to, the date of the disclosure, the name and, if known, the address of the recipient of the disclosure, a brief description of the PHI disclosed, and the purpose of the disclosure.

2.1.3 Modification of PHI. Except as permitted under section 2.13.2 below, BUSINESS ASSOCIATE shall not modify any existing PHI to which it is granted access. BUSINESS ASSOCIATE shall record any modification of PHI and retain such record for a period of seven (7) years.

2.1.4 Electronic Transaction Standards. Where applicable, BUSINESS ASSOCIATE shall adhere to the transaction standards as specified in 45 C.F.R. Parts 160 and 162.

2.2 Other Permitted Uses and Disclosures of PHI. BUSINESS ASSOCIATE may, if necessary and only to the extent necessary, use PHI (i) for the proper management and administration of BUSINESS ASSOCIATE's business, (ii) to provide data aggregation services relating to the health care operations of UPHS, or (iii) to carry out BUSINESS ASSOCIATE's legal responsibilities, subject to the limitation in section 2.3, below. BUSINESS ASSOCIATE shall obtain reasonable assurances from the person to whom the PHI is being disclosed that, as required under this Agreement, the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed. BUSINESS ASSOCIATE shall require that any Breaches or Security Incidents be immediately reported to BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall then report the Breach or Security Incident to UPHS in accordance with section 2.7.

2.3 Nondisclosure of PHI. BUSINESS ASSOCIATE is not authorized and shall not use or further disclose UPHS's PHI other than as permitted or required under this Agreement, or as required by law or regulation.

2.3.1 Disclosures Required by Law. In the event BUSINESS ASSOCIATE

is required by law to disclose PHI, BUSINESS ASSOCIATE shall promptly notify UPHS of such requirement. BUSINESS ASSOCIATE shall give UPHS sufficient opportunity to oppose such disclosure or take other appropriate action before BUSINESS ASSOCIATE discloses the PHI.

2.3.2 Legal Process. In the event BUSINESS ASSOCIATE is served with legal process or request from a governmental agency that may potentially require the disclosure of PHI, BUSINESS ASSOCIATE shall promptly, and in any case within five (5) business days of its receipt of such legal process or request, notify UPHS. BUSINESS ASSOCIATE shall not disclose the PHI without UPHS's consent unless pursuant to a valid and specific court order or to comply with a requirement for review of documents by a governmental regulatory agency under its statutory or regulatory authority to regulate the activities of either party.

2.4 Prohibition on Sale of PHI for Remuneration. Subject to the limitations set forth in Section 13405(d)(2) of the HITECH Act, BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for any of UPHS's PHI unless BUSINESS ASSOCIATE first obtains authorization from UPHS. UPHS shall not grant such authorization unless the subject of the PHI has granted UPHS a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the individual's PHI. The foregoing shall not apply to UPHS's payments to Business Associate for Services outlined in the underlying Agreement.

2.5 Security Standards. BUSINESS ASSOCIATE shall comply with the HIPAA Security Rule and take the appropriate security measures including the implementation of the administrative, physical and technical safeguards specified in 45 CFR §§ 164.306, 164.308, 164.310, 164.312 and 164.316 to protect the confidentiality, integrity and availability of UPHS's Electronic PHI that it creates, receives, maintains, or transmits on behalf of UPHS and to prevent any use or disclosure of UPHS's PHI other than as provided by this Agreement.

2.6 Security Documentation. BUSINESS ASSOCIATE shall maintain the policies and procedures implemented to comply with section 2.5 in written form (paper or electronic). If an action, activity or assessment is required to be documented, BUSINESS ASSOCIATE shall maintain a written record (paper or electronic) of the action, activity, or assessment, shall retain the documentation for six (6) years from the date of its creation or the date when it last was in effect, whichever is later, make documentation available to those persons responsible for implementing the procedures to which the documentation pertains, and review documentation periodically, and update as needed, in response to environmental or operational changes affecting the security of the Electronic PHI.

2.6.1 Security Assessment. During the term of this Agreement, Business

Associate may be asked to complete a security survey and/or attestation document designed to assist UPHS in understanding and documenting BUSINESS ASSOCIATE'S security procedures and compliance with the requirements contained herein.

2.7 Notification of Breaches and Security Incidents. BUSINESS ASSOCIATE shall notify UPHS in writing as soon as possible, but in no event more than five (5) business days, after BUSINESS ASSOCIATE becomes aware of any Breach of or Security Incident involving UPHS's PHI. BUSINESS ASSOCIATE shall be deemed to be aware of any Breach or Security Incident as of the first day on which such Breach or Security Incident is known or reasonably should have been known to its officers, employees, agents or subcontractors. BUSINESS ASSOCIATE shall identify as soon as practicable each individual whose unsecured PHI has been, or is reasonably believed by BUSINESS ASSOCIATE to have been, accessed, acquired, or disclosed during such Breach or Security Incident. BUSINESS ASSOCIATE shall cooperate in good faith, at its own cost and expense, with UPHS in the investigation of any Breach or Security Incident. As between UPHS and BUSINESS ASSOCIATE, UPHS shall have the final authority to determine whether a Breach of unsecured PHI has occurred and whether the breach notification requirements set forth in 45 CFR §§ 164 have been triggered.

2.8 Prompt Corrective Actions. In addition to the notification requirements in section 2.7 above, and with prior notice to UPHS, BUSINESS ASSOCIATE shall take (i) prompt corrective action to remedy any Breach or Security Incident, ii) mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by BUSINESS ASSOCIATE in violation of this Agreement, and (iii) take any other action required by UPHS pertaining to such Breach or Security Incident (e.g. establishment of a toll-free telephone contact number, staff the toll-free telephone contact number, mail individual notifications, etc.).

2.9 Notification of Corrective Action and Provision of Policies. BUSINESS ASSOCIATE will provide written notice to UPHS as soon as possible but no later than twenty (20) business days from the date that BUSINESS ASSOCIATE provided notice to UPHS under section 2.7 of (i) the actions taken by BUSINESS ASSOCIATE to mitigate any harmful effect of such Breach or Security Incident and (ii) the corrective action BUSINESS ASSOCIATE has taken or shall take to prevent future similar Breaches or Security Incidents. Upon UPHS's request, BUSINESS ASSOCIATE will also provide to UPHS a copy of BUSINESS ASSOCIATE's policies and procedures that pertain to the Breach or Security Incident involving UPHS's PHI, including procedures for curing any material breach of this Agreement.

2.10 Indemnification.

The Parties ("Indemnifying Party") shall indemnify, hold harmless and defend each other and each other's respective employees, other members of its workforce, directors, trustees, officers, subcontractors or agents "(Indemnified Party)" from and against any and all claims, losses, liabilities, costs, penalties, fines and other

expenses resulting from, or relating to, the acts or omissions of Indemnifying Party or its respective employees, other members of its workforce, directors, trustees, officers, subcontractors or agents, in connection with the duties and obligations under this Agreement, including, without limitation, any expenses Indemnified Party incurs in notifying Individuals of a Breach caused by Indemnifying Party. Section 2.10 shall survive termination of the Agreement.

2.11 Regulatory Compliance. BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use, disclosure or security of PHI received from UPHS (or created or received by BUSINESS ASSOCIATE on behalf of UPHS) available to any state or federal agency, including the U.S. Department of Health and Human Services, for purposes of determining UPHS's and/or BUSINESS ASSOCIATE's compliance with HIPAA, the HIPAA Regulations, and the HITECH Act.

2.12 Inspection of Records. Within thirty (30) calendar days after UPHS's written request, BUSINESS ASSOCIATE shall make available to UPHS and its authorized agents, during normal business hours, all facilities, systems, procedures, records, books, agreements, policies and procedures relating to the use and/or disclosure of UPHS's PHI for purposes of enabling UPHS to determine BUSINESS ASSOCIATE's compliance with HIPAA, the HIPAA Regulations, and the HITECH Act.

2.13 Rights of Individuals.

2.13.1 Individual's Right to Request Restrictions of PHI. BUSINESS ASSOCIATE shall notify UPHS in writing within five (5) business days after receipt of any request by individuals or their representatives to restrict the use and disclosure of the PHI that BUSINESS ASSOCIATE maintains for or on behalf of UPHS. Upon written notice from UPHS that it agrees to comply with the requested restrictions, BUSINESS ASSOCIATE agrees to comply with any instructions to modify, delete or otherwise restrict the use and disclosure of PHI it maintains for or on behalf of UPHS.

2.13.2 Individual's Request for Amendment of PHI. BUSINESS ASSOCIATE shall inform UPHS within five (5) business days after receipt of any request by or on behalf of the subject of the PHI to amend the PHI that BUSINESS ASSOCIATE maintains for or on behalf of UPHS. BUSINESS ASSOCIATE shall, within twenty (20) calendar days after receipt of a written request, make the subject's PHI available to UPHS as may be required to fulfill UPHS's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526. BUSINESS ASSOCIATE shall, as directed by UPHS, incorporate any amendments to UPHS's PHI into copies of such PHI maintained by BUSINESS ASSOCIATE.

2.13.3 Individual's Request for an Accounting of Disclosures of PHI. BUSINESS ASSOCIATE shall document all disclosures of PHI and, within twenty (20)

calendar days after receipt of a written request, make available to UPHS, and, if authorized in writing by UPHS, to the subject of the PHI, such information maintained by BUSINESS ASSOCIATE or its agents as may be required to fulfill UPHS's obligations to provide an accounting for disclosures of UPHS's PHI pursuant to HIPAA, the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.528, and the HITECH Act, including, but not limited to Section 13405(c).

2.13.4 Electronic Health Records. If BUSINESS ASSOCIATE, on behalf of UPHS, uses or maintains Electronic Health Records with respect to PHI, UPHS may provide an individual, upon the individual's request, with the name and contact information of BUSINESS ASSOCIATE so that the individual may make a direct request to BUSINESS ASSOCIATE for an accounting of disclosures made by BUSINESS ASSOCIATE during the three (3) years prior to the date on which the accounting is requested or as otherwise provided under the HITECH Act Section 13405(c)(4)(A) or Section 13405(c)(4)(B).

2.13.5 Access to PHI by the Individual. If UPHS determines that an individual's PHI is held solely by BUSINESS ASSOCIATE or if BUSINESS ASSOCIATE is acting on behalf of UPHS to provide access to or a copy of an individual's PHI, BUSINESS ASSOCIATE shall, within five (5) business days after receipt of a written request, make available to UPHS, and, if authorized in writing by UPHS, to the subject of the PHI, such information as may be required to fulfill UPHS's obligations to provide access to or provide a copy of the PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.524.

2.13.6 Access to Certain Information in Electronic Format. If BUSINESS ASSOCIATE uses or maintains Electronic Health Records with respect to PHI on behalf of UPHS, BUSINESS ASSOCIATE shall, upon request of UPHS, provide UPHS with the requested Electronic Health Record in an electronic format.

2.14 Compliance with Law. In connection with all matters related to this Agreement, BUSINESS ASSOCIATE shall comply with all applicable federal and state laws and regulations, including, but not limited to, HIPAA, the HIPAA Regulations, 45 CFR Parts 160, 162 and 164, and the HITECH Act, Subtitle D, part 1, as they may be amended from time to time.

3 Nothing in this Agreement shall permit the BUSINESS ASSOCIATE or any of its agents or subcontractors to share, use or disclose PHI in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States (e.g. "Offshoring") without express written authorization from the Covered Entity.

4. TERMINATION AND OTHER REMEDIES.

4.1 Notice to Secretary. If a party knows of a pattern of activity or practice by the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, if the breach or violation continues despite the other party's efforts to cure the breach or end the violation, and if termination of this Agreement is not feasible, then the breach or violation shall be reported to the Secretary.

4.2 Material Breach. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

4.2.1 Terminate the Agreement immediately if cure of the breach is not feasible;

4.2.2 Terminate the Agreement unless the other party, within five (5) business days, provides a plan to cure the breach and, within fifteen (15) business days, cures the breach;

4.3 Effect of Termination - Return or Destruction of PHI held by BUSINESS ASSOCIATE or BUSINESS ASSOCIATE's Agents. Upon termination, expiration or other conclusion of the Agreement for any reason, BUSINESS ASSOCIATE shall return or, at the option of UPHS, provide for the Destruction of all PHI received from UPHS, or created and received by BUSINESS ASSOCIATE on behalf of UPHS in connection with the Agreement, that BUSINESS ASSOCIATE or its Agents still maintains in any form, and shall retain no copies of such PHI. Not less than thirty (30) calendar days after the termination of the Agreement, BUSINESS ASSOCIATE shall both complete such return or Destruction and certify in writing to UPHS that such return or Destruction has been completed.

4.4 Return or Destruction Not Feasible. If BUSINESS ASSOCIATE represents to UPHS that return or Destruction of UPHS's PHI is not feasible, BUSINESS ASSOCIATE must provide UPHS with a written statement of the reason that return or Destruction by BUSINESS ASSOCIATE or its Agents is not feasible. If UPHS determines that return or Destruction is not feasible, this Agreement shall remain in full force and effect and shall be applicable to any and all of UPHS's PHI held by BUSINESS ASSOCIATE or its Agents.

4.5 Other Remedies. Notwithstanding the foregoing rights to terminate the Agreement, UPHS shall have such other remedies as are reasonably available at law or equity, including injunctive relief.

4.6 Civil and Criminal Penalties. BUSINESS ASSOCIATE understands and agrees that it is subject to civil or criminal penalties applicable to BUSINESS ASSOCIATE for unauthorized use, access or disclosure of PHI in accordance with the

HIPAA Regulations and the HITECH Act.

5. **CHANGES TO THIS AGREEMENT.**

5.1 **Compliance with Law.** The parties acknowledge that state and federal laws and regulations relating to electronic data security and privacy are rapidly evolving and that changes to this Agreement may be required to ensure compliance with such developments. The parties specifically agree to take such action as may be necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations, the HITECH Act, and other applicable state and federal laws and regulations relating to the security or confidentiality of PHI.

5.2 **Negotiations.** In the event of a change in or interpretation of any state or federal law, statute, or regulation which materially affects the rights or obligations of either party under the Agreement, the parties agree to negotiate immediately in good faith any necessary or appropriate revisions to this Agreement. If the parties are unable to reach an agreement concerning such revisions within the earlier of sixty (60) calendar days after the date of notice seeking negotiations or the effective date of a change in law or regulation, then either party may immediately terminate the Agreement upon written notice to the other party.

6. **Intentionally Omitted**

7. **MISCELLANEOUS PROVISIONS.**

7.1 **Assistance in Litigation or Administrative Proceedings.** BUSINESS ASSOCIATE shall make itself, and any employees or agents assisting BUSINESS ASSOCIATE in the performance of its obligations under the Agreement, available to UPHS at no cost to UPHS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against UPHS, its directors, officers, agents or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy and arising out of the Agreement.

7.2 **No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, any rights, remedies, obligations or liabilities whatsoever upon any person or entity other than UPHS, BUSINESS ASSOCIATE and their respective successors or assigns.

7.3 **Survival.** The obligations of BUSINESS ASSOCIATE under Sections 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 4.3, 4.4, and 6 of this Agreement shall survive the termination of the Agreement.

7.4 **Notices.** Any notices to be given to either party shall be made via U.S. Mail or express courier to the address given below and/or via facsimile to the facsimile

telephone numbers listed below.

7.5 Entire Agreement. Both parties agree that this Business Associate Agreement represents the entire understanding of the parties with respect to the subject matter covered herein and supersedes and nullifies any previous Business Associate Agreement and/or Addendum that the parties have entered into. For clarification and not limitation, this Business Associate Agreement only applies to the SANE Services performed by SARC for Covered Entity under the separate Services Agreement.

If to BUSINESS ASSOCIATE, to: to:
Edward G. Longazel, M.H.A., C.H.C., C.H.R.C.
Vice President
Chief Compliance, Privacy and Internal Audit Officer
Drexel University
Suite 10666
Three Parkway
1601 Cherry Street
Philadelphia, Pa. 19102-1192
[REDACTED] (voice)
[REDACTED] (fax)
[REDACTED]

With a copy (which shall not constitute notice) to:
Office of the General Counsel
Drexel University College of Medicine
1601 Cherry Street, Suite 16207
Philadelphia, PA 19102

Attention: _____

Attention: _____

Fax: _____

Fax: _____

If to UPHS, to:

With a copy (which shall not constitute notice) :

Hospital of the University of Pennsylvania,
Division of Traumatology, Surgical Critical
Care and Emergency Surgery _____
3400 Spruce Street
Philadelphia, PA 19104
Attention: James Ballinghoff
RN, MSN, MBA, Chief Nursing Officer, PPMC
PPMC Administration
Fax: (215)615-4748

University of Pennsylvania
Office of the General Counsel
3539 Locust Walk
Philadelphia, PA 19104
Attention: Deputy General Counsel
Fax: (215) 746-5301

Each party may change its address and that of its representative for notice by giving notice in the manner provided above.

IN WITNESS WHEREOF, the parties hereto have duly executed this BUSINESS ASSOCIATE AGREEMENT.

The Trustees of the University of Pennsylvania
As owner and operator of the
University of Pennsylvania Health System

Drexel University for its
College of Medicine

Signature

Garry L. Scheib
Printed Name

Chief Operating Officer, UPHS
Title

Date

12-10-15

Signature

Edward G. Longazel, M.H.A., C.H.R.C.
Printed Name

Vice President
Chief Compliance, Privacy and Internal
Audit Officer
Drexel University
Title

Date